United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 09-1054**
	)	**Issued: November 5, 2009**
DEPARTMENT OF THE ARMY, WILLIAM BEAUMONT ARMY MEDICAL CENTER, El Paso, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2009 appellant filed an appeal of a schedule award decision of the Office of Workers' Compensation Programs' dated February 18, 2009.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award in this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she has more than a two percent impairment of bilateral upper extremities, for which she received schedule awards.

[1] Appellant also filed an appeal of decisions of the Office dated February 7 and November 2, 2008 that terminated her wage-loss compensation on the grounds that she refused an offer of suitable work and a July 23, 2008 decision that denied her request for written review. This appeal is docketed as Docket No. 09-1054.

FACTUAL HISTORY

The Office accepted that appellant, a food service worker, sustained employment-related bilateral carpal tunnel syndrome (CTS) and displacement cervical disc and radiculitis. Appellant did not return to work after cervical surgery on April 21, 2006 and she elected civil service retirement on October 24, 2007, retiring on November 15, 2007.

On February 5, 2008 appellant filed a schedule award claim. She submitted a January 2, 2008 report from Dr. Michael K. Boone, a Board-certified physiatrist, who provided findings on examination.[2] Dr. Boone advised that maximum medical improvement had been reached as of that day and that he utilized the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[3] Regarding appellant's left upper extremity, Dr. Boone identified the C5 nerve under Table 16-13[4] and advised that under Table 16-10 she had a C5 sensory deficit on the left of one percent and under Table 16-11, a C5 motor deficit of five percent.[5] Regarding appellant's bilateral CTS, he utilized Table 16-15[6] and identified the median nerve, finding that she had a bilateral 10 percent sensory deficit under Table 16-10 and a 3 percent motor deficit under Table 16-11 for a bilateral 13 percent impairment.[7] Dr. Boone concluded that she had a 13 percent right upper extremity impairment due to CTS and, by combining her 16 percent C5 deficit with his 13 percent median nerve deficit due to CTS, she had a 27 percent left upper extremity impairment.

On February 7, 2008 the Office requested that an Office medical adviser review the medical record, including the January 2, 2008 report from Dr. Boone. In a February 19, 2008 report, the Office medical adviser concurred with Dr. Boone's conclusion that appellant had a 13 percent impairment of the right upper extremity and a 27 percent impairment on the left. He advised that maximum medical improvement was achieved on January 2, 2008.

By decision dated February 18, 2009, appellant was granted schedule awards for a permanent loss of two percent, bilateral hand, for a total of 4.88 weeks, to run from January 2 to February 5, 2008.

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[2] The Board notes that the record includes a number of additional medical reports. None, however, provides an impairment analysis.

[3] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[4] *Id*. at 489.

[5] *Id*. at 482, 484.

[6] *Id*. at 492.

[7] *Id*. at 482, 484.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[8] and section 10.404 of the implementing federal regulations,[9] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*[10] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[11]

It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[12] Office procedures provide that to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred ("date of maximum medical improvement"), describes the impairment in sufficient detail to include, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity decreases in strength or disturbance of sensation or other pertinent description of the impairment and the percentage of impairment should be computed in accordance with the fifth edition of the A.M.A., *Guides*. The procedures further provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment and the Office medical adviser should provide rationale for the percentage of impairment specified.[13]

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] A.M.A., *Guides, supra* note 3.

[11] *See Joseph Lawrence, Jr., supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[12] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[14] Regarding CTS, the A.M.A., *Guides* provide:

> "If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present--
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS is rated according to the sensory and/or motor deficits as described earlier.
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed [five] percent of the upper extremity may be justified.
> >
> > 3 Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[15]

Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The impairment is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved, the impairment values derived for each are combined.[16]

Section 8106(c)(2) of the Act and section 10.517 of Office regulations provide that if a partially disabled employee refuses or neglects work after suitable work is offered to him or her is not entitled to compensation.[17] It is well established that the period covered by the schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is

[14] A.M.A., *Guides*, *supra* note 3 at 433-521.

[15] *Id*. at 495.

[16] *Id.* at 481; *see Kimberly M. Held*, 56 ECAB 670 (2005).

[17] 5 U.S.C. § 8106(c)(2); 20 C.F.R. § 10.517; *see D.S.*, 60 ECAB ___ (Docket No. 08-885, issued March 17, 2009).

usually considered to the date of the evaluation by the attending physician which is accepted as definitive by the Office.[18]

ANALYSIS

While the medical evidence in this case supports that appellant has a 27 percent left upper extremity impairment and a 13 percent right upper extremity impairment,[19] the Act provides that if a partially disabled employee refuses or neglects work after suitable work is offered, he or she is not entitled to further monetary compensation.[20] Appellant's monetary compensation was terminated on February 7, 2008 because she refused an offer of suitable work.[21] Both Dr. Boone, an attending physiatrist, and the Office medical adviser opined that maximum medical improvement was reached on January 2, 2008. Although section 8106(c) serves as a bar to compensation for the period after the termination of compensation for refusal of suitable work, if a claimant reached maximum medical improvement prior to the refusal of suitable employment, he or she would be entitled to payment of any portion of a schedule award due prior to the termination of monetary compensation benefits.[22] The period covered by the schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury.[23] The Office properly determined that appellant was entitled to a schedule award beginning on January 2, 2008, the date maximum medical improvement was reached. By its February 18, 2009 schedule award decision, however, the Office found that appellant's entitlement to a schedule award compensation ceased on

[18] *Mark A. Holloway*, 55 ECAB 321 (2004).

[19] In a January 2, 2008 report, Dr. Boone advised that under Table 16-10 of the A.M.A., *Guides*, appellant had a 25 percent sensory weakness involving the C5 nerve of the left upper extremity. He then referenced Table 16-13 to find a maximum sensory deficit for C5 weakness of 5 percent which, when multiplied by 25 percent, yielded a 1 percent left upper extremity impairment due to C5 sensory loss. Dr. Boone advised that under Table 16-11, appellant had a 50 percent motor weakness involving the C5 nerve of the left upper extremity and properly referenced Table 16-13 to find a maximum motor deficit for C5 weakness of 30 percent which, when multiplied by 50 percent, yielded a 15 percent left upper extremity impairment due to C5 motor loss. A.M.A., *Guides*, *supra* note 4 at 482, 484, 489. Dr. Boone then identified the median nerve, finding that under Table 16-10, appellant had a bilateral 25 percent sensory weakness involving the median nerve. He properly referenced Table 16-15 to find a maximum sensory deficit of the median nerve of 39 percent which, when multiplied by 25 percent, yielded a 10 percent upper extremity impairment due to median sensory loss. Dr. Boone then found that under Table 16-11, appellant had a 25 percent bilateral motor weakness involving the median nerve of each upper extremity and properly referenced Table 16-15 to find a maximum motor deficit for median nerve weakness of 10 percent which, when multiplied by 25 percent, yielded a 3 percent upper extremity impairment due to median motor loss. *Id.* note 3 at 482, 484, 492. Dr. Boone concluded that appellant had a 13 percent right upper extremity impairment and, by combining values, a 27 percent impairment of the left upper extremity. *Id*. at 604. In his February 19, 2008 report, the Office medical adviser concurred with Dr. Boone's calculations and application of the A.M.A., *Guides*, concluding that appellant had a 13 percent impairment of the right upper extremity and a 27 percent impairment on the left.

[20] *Supra* note 17.

[21] *Supra* note 1.

[22] *D.S., supra* note 17.

[23] *Supra* note 18.

February 5, 2008 whereas the Office terminated her wage-loss compensation as of February 7, 2008. Appellant would therefore be entitled to an additional schedule award for this two-day period.

CONCLUSION

The Board finds that appellant is entitled to a schedule award for bilateral upper extremity impairments for the period January 2 to February 7, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2009 is affirmed as modified.

Issued: November 5, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board